

ORDER NO. 3082

UNITED STATES OF AMERICA
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Before Commissioners:

Robert G. Taub, Acting Chairman;
Nanci E. Langley, Vice Chairman;
Mark Acton; and
Tony Hammond

Competitive Product Prices
Priority Mail Contract 85 (MC2014-34)
Negotiated Service Agreement

Docket No. CP2014-60

ORDER APPROVING SECOND AMENDMENT TO
PRIORITY MAIL NEGOTIATED SERVICE AGREEMENT

(Issued February 17, 2016)

I. INTRODUCTION

The Postal Service seeks to amend a Priority Mail negotiated service agreement.¹ For the reasons discussed below, the Commission approves the Amendment.

¹ Notice of United States Postal Service of Change in Prices Pursuant to Amendment to Priority Mail Contract 85, February 5, 2016 (Notice). The amendment is an attachment to the Notice (Amendment).

In Order No. 2141, the Commission approved the Priority Mail Contract 85 negotiated service agreement (Existing Agreement).² On February 5, 2016, the Postal Service filed notice that it has agreed to the Amendment to the Existing Agreement. Notice at 1. On February 8, 2016, the Commission issued an order reopening this docket to consider the Amendment, appointing a Public Representative, and providing interested persons with an opportunity to comment.³

The Postal Service intends for the Amendment to become effective two business days after the date that the Commission completes its review of the Notice. Notice at 1; Amendment at 1. The Postal Service filed supporting financial documentation and a certified statement, as required by 39 C.F.R. § 3015.5. Notice at 1. The Postal Service asserts that the Amendment will not impair the ability of the contract to comply with 39 U.S.C. § 3633. *Id.* Attachment B at 1.

II. COMMENTS

Comments were filed by the Public Representative.⁴ No other person submitted comments. The Public Representative reviewed the Amendment, the Existing Agreement, and the financial model filed under seal. See PR Comments at 2. Based on that review, she concludes that the Existing Agreement, as amended, should continue to generate sufficient revenue to cover costs and satisfy 39 U.S.C. § 3633(a) during its first year. *Id.* Additionally, she opines the price adjustment provision included in the amended contract should generate sufficient revenue to satisfy 39 U.S.C. § 3633(a) during the subsequent years that the contract is in effect. *Id.*

² See Docket Nos. MC2014-34 and CP2014-60, Order Adding Priority Mail Contract 85 to the Competitive Product List, August 4, 2014 (Order No. 2141). The contract was later amended. See Order No. 2234, Order Approving Amendment to Priority Mail Contract 85 Negotiated Service Agreement, October 31, 2014.

³ Order No. 3065, Notice and Order Concerning Amendment to a Priority Mail Negotiated Service Agreement, February 8, 2016.

⁴ Public Representative Comments on Postal Service Notice of Amendment to Priority Mail Contract 85, February 16, 2016 (PR Comments).

III. COMMISSION ANALYSIS

The Commission has reviewed the Notice, the accompanying materials filed under seal, and the comments filed by the Public Representative.

Cost considerations. The Commission reviews competitive product prices to ensure that each product covers its attributable costs, does not cause market dominant products to subsidize competitive products, and contributes to the Postal Service's institutional costs. 39 U.S.C. § 3633(a); 39 C.F.R. §§ 3015.5 and 3015.7. As long as the revenue generated by the product exceeds its attributable costs, the product is unlikely to reduce the contribution of competitive products as a whole or to adversely affect the ability of competitive products as a whole to contribute an appropriate share of institutional costs. In other words, if a product covers its attributable costs, it is likely to comply with 39 U.S.C. § 3633(a).

The Amendment modifies the pricing structure of discounts offered to the contract partner in the Existing Agreement. Amendment at 1-3.

Based on a review of the record, the Commission finds that the Existing Agreement, as amended, should cover its attributable costs. 39 U.S.C. § 3633(a)(2). For this reason, it finds that the Existing Agreement, as amended, should not result in competitive products as a whole being subsidized by market dominant products, in accordance with 39 U.S.C. § 3633(a)(1). Similarly, it finds the amended agreement is unlikely to prevent competitive products as a whole from contributing an appropriate share of institutional costs, consistent with 39 U.S.C. § 3633(a)(3). See *also* 39 C.F.R. § 3015.7(c). Accordingly, a preliminary review of the Amendment indicates it is consistent with section 3633(a). The annual rate adjustment provision in section I.H. of the Existing Agreement, as amended, should allow the amended agreement's revenue to cover costs for the duration of its term. The Commission will continue to review the cost coverage of the amended agreement in its Annual Compliance Determination to ensure that rates cover costs.

Other considerations. The Postal Service states that the Amendment shall become effective two business days after the date that the Commission completes its

review. Notice at 1; Amendment at 1. The Existing Agreement, as amended, is set to expire three years after the initial effective date unless, among other things, either party terminates the contract with 30 days' written notice to the other party or it is renewed by mutual agreement.⁵

If the Existing Agreement, as amended, is terminated prior to the scheduled expiration date, the Postal Service shall promptly notify the Commission.

In conclusion, the Commission approves the Existing Agreement, as amended.

IV. ORDERING PARAGRAPHS

It is ordered:

1. The Commission approves the Priority Mail Contract 85 negotiated service agreement, as amended.
2. The Postal Service shall notify the Commission if the Existing Agreement, as amended, terminates prior to the scheduled expiration date.

By the Commission.

Stacy L. Ruble
Secretary

⁵ Docket Nos. MC2014-34 and CP2014-60, Request of the United States Postal Service to Add Priority Mail Contract 85 to Competitive Product List and Notice of Filing (Under Seal) of Unredacted Governors' Decision, Contract, and Supporting Data, July 23, 2014, Attachment B at 5. Should both parties agree to renew the agreement, any such renewal is required to follow the requirements of 39 U.S.C. § 3633 and the Commission's implementing regulations of 39 C.F.R. part 3015.